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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 666 of 2000

in

SPECIAL CIVIL APPLICATIONNo 9121 of 2000

with

LETTERS PATENT APPEAL No.696 of 2000

in

SPECIAL CIVIL APPLICATION No 9120 of 2000

with

LETTERS PATENT APPEAL No 667 of 2000

in

MISC. CIVIL APPLICATION No 1479 of 2000

with

CIVIL APPLICATION NOs.9967, 10295 and 9966 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHAVIR TRADING CO

Versus

OFFICIAL LIQUIDATOR OF THE VISNAGAR COOP SPINING

Appearance:

MR SN SOPARKAR, WITH MR YN RAVANI for Appellants

MR DG CHAUHAN for Respondent No. 1

MR MA BUKHARI, AGP, for Respondent No. 2, 3

CORAM : MR.JUSTICE J.N.BHATT

and

MR.JUSTICE Y.B.BHATT

Date of decision: 27/02/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

In this group of three appeals under clause 15 of the Letters Patent, common questions are raised and involved, and, therefore, they are, upon request, being disposed of after hearing, simultaneously, by this common judgment and order.

The appellants in this group of three appeals are original petitioners, who, inter alia, prayed for direction to the respondent No.1, Official Liquidator of the Visnagar Cooperative Spinning Mills Ltd., a co-operative society in liquidation, to accord preferential priority to them over other creditors, for their due amounts towards the goods and deposit amounts and job work charges, mainly, on the premise that those dues are referable to and in connection with rehabilitation and post-winding up expenditure given to the Official Liquidator. Their contentions before the learned single Judge, in both the petitions were not accepted and the review application, followed, also, came to be rejected. Hence this group of three Letters Patent Appeals before us.

In view of the urgency in the matters, these appeals were admitted and upon joint request, they were taken up for final hearing.

On 9.12.96, the Joint Director, Kutir and Rural Industries, State of Gujarat, passed order of appointment of Liquidator for the Visnagar Cooperative Spinning Mills Ltd., and accordingly, Official Liquidator took over charge of the said Society, on 18.12.96. With a view to give employment to workers and to continue the manufacturing activities on job work basis, efforts were put on by the Official Liquidator during the spell from July to November 1997 and, in course of time, Official Liquidator had requested the appellants to supply cotton yarn for job work purposes as well as advance for the purpose of paying salary to the labourers. The Official Liquidator, also, was required to make payment for electricity bills. He had requested the appellants by writing letters and the appellants had supplied cotton materials for job work and, simultaneously, had also paid certain amounts, in advance, towards deposits to the Official Liquidator.

Unfortunately, the manufacturing activities came to a grinding-halt due to several reasons. Therefore, in response to a statement given to the appellants about the deficit supply of cotton yarn, the appellants lodged claims and requested to pay back the amount of deposits as well as to return the cotton yarn given by the appellants to the Official Liquidator. The Official Liquidator had given details about the deposits and raw material lying with him, given by the appellants. Thereafter, the Official Liquidator had published an advertisement, on 3.8.2000, with a view to dispose of the entire assets of the Mills under liquidation, including the movables which included the cotton yarn supplied by the appellants. Being aggrieved by the said advertisement and the approach of the Official Liquidator, the appellants filed two writ petitions which came to be rejected by the learned single Judge. A review application followed, which also, came to be rejected.

It is not in controversy that the supply of cotton yarn and the deposits of amounts by the appellants to the Official Liquidator, respondent No.1, had been with a view to continue the manufacturing activities and to give employment to the labourers. It is, therefore, undisputed before us that the supply of goods and advancement of amounts by the appellants to the Official Liquidator was for rehabilitation and/or the payment of urgent nature, like electricity bills and salary to the labourers. Obviously, therefore, the approach and the contention of the Official Liquidator in not treating the

same towards "cost and expenses of winding up" of the Cooperative Society under liquidation was not justified. The deal was made between the appellants and the Official Liquidator in his capacity as Official Liquidator. We are, therefore, of the clear opinion that the dues and debts of the appellants could not be characterised as debts of the company requiring them to wait in queue. This aspect was not, effectively, brought to the notice of the learned single Judge.

With the result, the impugned orders recorded by the learned single Judge in the writ petitions are required to be quashed and set aside, and accordingly, they are quashed and set aside with a direction to the Official Liquidator, respondent No.1, to treat the dues and debts arising out of the said deal between the appellants and the Official Liquidator for post winding up process and settle the same as cost and expenses towards beneficial winding up of the co-operative Mill in liquidation, in accordance with law, expeditiously.

The appeals shall stand allowed accordingly with costs.

In view of the orders recorded in the main appeals, the Civil Applications does not survive. They shall stand disposed of accordingly.

(J.N.Bhatt, J.)

(Y.B.Bhatt, J.)
(vjn)